

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1431 of 1999

WITH

FIRST APPEAL Nos. 1853 of 1999 to 1879 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI and

MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?

4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge? : NO
1 to 5 No

GENERAL MANAGER, (LAND ACQUISITION),ONGC

Versus

PASHIBEN WD/O BHAILAL RANCHHODBHAI THRO'HEIRS KESHAVBHAI

Appearance:

MR K.M. THAKKAR for M/S TRIVEDI & GUPTA for Petitioner
MR A.B. MUNSHI with MR A.J. PATEL for Respondent No.1
MR P.G. DESAI, GP for Res. No.2 in F.A. Nos. 1431
1991 to F.A. Nos. 1853 to 1865 of 1999
MR. R.C. KODEKAR, AGP for Res. No.2 in F.A. Nos.
1866 of 1999 to 1879 of 1999

CORAM : MR.JUSTICE M.H.KADRI and

MR.JUSTICE J.R.VORA

Date of decision: 05/10/1999

1. The appellant has filed this group of First Appeals under Section 54 of the Land Acquisition Act 1894 (hereinafter referred to as the "Act" for short) read with Section 96 of the Code of Civil Procedure, challenging the common judgment and order dated July 11,

1998 passed by the learned Third Extra Assistant Judge, Ahmedabad (Rural) at Mirzapur, in a group of Land Reference Cases No. 375 of 1994 to 400 of 1994, Land Reference Case No. 325 of 1995 and Land Reference Case No. 326 of 1995. As the present appeals arise from common judgment and award rendered in a group of Land Acquisition Cases, and as common questions of facts and law arise in these appeals, the same are disposed of by this common judgment.

2. Deputy General Manager (Oil & Natural Gas Commission), Ahmedabad Project, Chandkheda, made a proposal on December 26, 1990, by his letter bearing No. AMD/LAQ/D-Solter Plant, to the State Government to acquire agricultural lands of village Bareja for installing D'Solter Plant. The said proposal was scrutinised by the Government, and Notification under Section 4(1) of the Act came to be published in the Government Gazette on April 22, 1990. The persons interested in the proposed acquired lands filed their objections before the Land Acquisition Officer, which were considered by the Land Acquisition Officer, and after considering the objections, the report under Section 5-A(2) was made by the Land Acquisition Officer to the Government. The State Government after considering the report of the Land Acquisition Officer made under Section 5-A(2) of the Act, made the declaration under Section 6 of the Act, which came to be published in the Government Gazette on June 30, 1990. Individual notices under Section 9 (3)-(4) of the Act were issued and served on the persons interested in the proposed acquired lands for determination of compensation. The persons interested i.e the claimants claimed compensation of the acquired lands before the Land Acquisition Officer at the rate of Rs.100/- per sq. meter. The Land Acquisition Officer on the basis of materials produced before him, made award on July 27, 1994 under Section-11 of the Act and offered compensation of the acquired lands, ranging between Rs.8 and Rs. 13 per sq.meter. The claimants respondents were of the opinion that the compensation offered by the Land Acquisition Officer was inadequate and, therefore, they

filed written applications under Section 18 of the Act requiring the Land Acquisition Officer to refer the applications to the District Court for the determination of the market value of the acquired lands. The said applications filed by the respondents were referred to the District Court, Ahmedabad (Rural), which came to be numbered as Land Reference Cases as mentioned above. Before the Reference Court also, the respondents claimed compensation of the acquired lands at the rate of Rs. 100/- per sq. meter.

3. The claim petitions filed by the respondents were contested by the appellant by filing their reply at Exhibit 10, *inter alia*, contending that the amount of compensation offered by the Land Acquisition Officer was just and adequate and the Land Acquisition Officer had taken into consideration all the relevant aspects before fixing the market price of the acquired lands. It was claimed that the acquired lands were situated at a distance of 14 kilometers from Ahmedabad City and did not

possess building potentiality, and, therefore, the claimants were not entitled to claim enhanced compensation and the claim petitions be dismissed with costs.

4. On the basis of the above pleadings, the Reference court raised issues at Exhibit 9 in Land Acquisition Case No. 325 of 1994, which was treated as main Land Reference Case, in which the parties led common evidence.

5. To substantiate their claim for enhanced compensation, the claimants examined (i) Kaushikbhai Chotabhai Patel - Exh.18, claimant of LAC No. 380 of 1994; (ii) Ambalal Maganbhai Rana - Exh. 26, vendor of the land sold under Sale Deed Exhibit 22. The respondents produced documentary evidence, such as, copy of Sale Deed Index Register at Exhibit 22, Certified copy of the Judgment and Award, passed by the Third Joint District Judge, Ahmedabad (Rural), in Land Acquisition Case No. 140 of 1989, at Exhibit - 23, Certified copy of Judgment and Award passed by Second Joint District Judge, Ahmedabad (Rural), in Land Acquisition No. 1116 of 1987, Exhibit-24, certified copy of Judgment and Award passed by the Second Joint District Judge, Ahmedabad (Rural) in Land Acquisition Case No. 5 of 1998, at Exhibit 25 and the copies of Village Form Nos. 7/12 extracts of acquired lands at Exhibits 35 to 102. The appellant did not lead any oral evidence but produced documentary evidence, which consists of copy of panchnama of standing

crops and trees in the land of village Piplaj, at Exhibit 29, copy of statement showing the price of standing crops of the lands of village Bareja, at Exhibit - 30, copy of panchnama of standing crops and trees of the acquired lands, at Exhibit - 31 and copy of panchnama of crops of land of village Bareja, at Exhibit 32.

6. The Reference court on the over all appreciation of oral as well as documentary evidence produced by the claimants - respondents and the appellant, deduced that the compensation offered by the Land Acquisition Officer was inadequate. The Reference Court held that Sale Deed - Exhibit 22, which was in respect of agricultural land bearing block No. 815 of survey No. 2242/1/2, admeasuring 2124 sq.meters, was not comparable with the acquired lands because the lands sold under the Sale Deed Exhibit 22 were of smaller area and situated on National Highway, whereas the acquired lands were far away from the National Highway. The Reference Court for the determination of the market value of the acquired agricultural lands of village Bareja, placed reliance on previous Award Exhibit 23, rendered in Land Acquisition Case No. 140 of 1989 in respect of acquired lands of village Bareja. The acquired lands which were the subject matter of previous Award - Exhibit 23, were put under Acquisition by Notification issued under Section 4(1) of the Act on January 5, 1984. The Land Acquisition Officer had offered compensation for the acquired lands of village Bareja, which were the subject matter of Award - Exhibit 23 at the rate of Rs.5 and Rs.8 per Sq.meter. The Reference Court by Award Exhibit 23 determined the market price of the acquired lands of village Bareja as on January 05, 1984 at the rate of Rs.35 and Rs.38 per Sq. meter. Lands of the present respondents were acquired pursuant to Notification issued under Section 4(1) of the Act on April 22, 1991 and therefore, there was a gap of more than 7 years between the issuance of the two Notifications. The Reference Court gave rise of price at 10% every year for arriving at the market value of the acquired lands as on April 22, 1991. The Reference Court determined the market value of the acquired lands based on the data available at the relevant time and awarded additional amount of compensation of Rs.51/- per sq. meter. The Reference Court further concluded that the compensation offered by the Land Acquisition Officer in respect of the Kharaba land, which was a part of the agricultural lands, was highly inadequate and the kharaba land ought to have been considered as agricultural land. Therefore, the Reference Court awarded additional compensation for the kharaba land also at the rate of Rs.51 per sq. meter,

which has given rise to the filing of this group of Appeals by the appellant acquiring body.

7. Learned counsel Mr. K.M. Thakkar for the appellant and learned counsel Mr. A.J.Patel, who appeared on behalf of the respondents on caveat, has taken us through the entire evidence and record and proceedings produced before the Reference Court. Learned counsel Mr. K.M. Thakkar for the appellant has submitted that the Reference Court erred in awarding uniform rate of compensation for the entire acquired lands without taking into consideration that the acquired lands were of new tenure as well as old tenure lands and part of the acquired lands were used as kharaba lands. Learned counsel for the appellant has submitted that the kharaba lands were never used for carrying out agricultural activities and, therefore, uniform rate should not have been awarded for the said lands. It is submitted by the learned counsel for the appellant that the Award at Exhibit 23 was not relevant and comparable, to determine the market price of the acquired lands and the Reference Court erred in relying on Award - Exhibit 23 in determining the market value of the acquired lands. Learned Counsel for the appellant pleaded that the Reference Court had not discussed and followed the relevant principle for the determination of the market value of the acquired lands and the market value arrived at by the Reference Court of the acquired lands was unjust, unwarranted and on the higher side and, therefore, these appeals be admitted and the judgment and award rendered by the Reference Court be quashed and set aside.

8. Learned counsel for the respondents has pleaded that the lands acquired of village Bareja were highly fertile and the agriculturists used to raise three crops in a year and derived annual income of Rs. 20,000 out of the agricultural produces. He further pleaded that village Bareja was having all the facilities, such as, schools, theater, banks, electricity and the village is connected with all major cities of Gujarat. It is claimed by the learned counsel for the respondents that Award at Exhibit 23 was in respect of the acquired lands of the same village - Bareja, wherein the market value of the acquired lands were determined as on January 5, 1984 at the rate of Rs. 35/- and Rs.38/- per sq. meter. The learned counsel submitted that the evidence led by the claimants had established that village Bareja was fast developing and there were rice mills, petrol pumps and other industrial units. It was further submitted by the learned counsel for the respondents that because of heavy

development in the surrounding of village Bareja, there was heavy pressure on the lands and the price of the lands of village Bareja had increased every year. It is claimed by the learned counsel for the respondents that the lands which were subject matter of award Exhibit 23, were in all respect comparable and relevant for the determination of the market value of the present acquired lands. It is submitted by the learned counsel for the respondents claimants that Award Exhibit 23 was not challenged in any higher forum and it had become final and, therefore, the Reference Court did not commit any error in placing reliance on Award Exhibit 23, which had become final. It is contended by the learned counsel for the respondents claimants that the Reference Court had not committed any error in treating the kharaba lands at par with other acquired agricultural lands because activities ancillary to agricultural operations were carried on in the kharaba lands, such as, threshing, storing of manure, fertilizers and seeds. It is contended by the learned counsel for the respondents that by no stretch of imagination, it can be said that kharaba lands were uncultivable. Learned counsel for the respondents pleaded that the Reference Court had not committed any error in awarding uniform compensation for the kharaba lands treating them as agricultural lands. It is submitted that the Reference Court had awarded just, reasonable and adequate compensation of the acquired lands to the respondents and this group of Appeals deserve to be dismissed with costs.

9. The claimant's witness Kaushikbhai Chhotabhai Patel - Exhibit 18, gave description of the acquired lands and deposed that he was the claimant of Land Acquisition Case No. 380 of 1994 and was the owner of Block No. 860 and 862. It has also come in his evidence that the claimants used to raise three crops in a year and get Rs.20,000/- as annual income out of the agricultural produces. He also described the topography of village Bareja and deposed that village Bareja was having population of 35000 people. The witness deposed that village Bareja was having Nagarpanchayat, Schools, Police Station, Theatre, 3 Commercial Banks, Co-operative Milk Federation, Residential Societies, Petrol Pumps, 35 Rice Mills and one Factory of Gujarat Agro Industries. The witness also mentioned that village Bareja was situated on Highway No.8 i.e. Ahmedabad - Bombay National Highway. He further deposed that recently IOC had acquired agricultural lands of village Bareja for constructing its plant and paid to the owners of the acquired lands at the rate of Rs.180 per sq. meter. The claimant's witness No.2 Ambalal Maganbhai Rana - Exhibit

26 proved sale deed - Exhibit 22. He deposed that he was resident of village Bareja and he had purchased land bearing Survey No. 2241/1/2 of Block No.815 admeasuring 2125 sq. meters by registered sale deed on November 02, 1991 for a consideration of Rs.2,15,985/- and the rate of the purchased land was Rs.102/- per sq.meter. He claimed that land of sale deed Exhibit 22 is nearer to National Highway but it is within the limits of Bareja village. He further stated in his oral deposition that the acquired lands are situated at a distance of 5 to 6 fields away from his land which was purchased under sale deed Exhibit-22. The witness was cross-examined searchingly by the learned advocate for the acquiring body, but his evidence could not be dislodged during the cross-examination. Thus, the evidence of this witness establishes that in the month of November, 1991, the price of the land of village Bareja was approximately Rs.102/- per sq.meter. The Notification under Section 4(1) of the Act was issued in the month of July, 1991 i.e. prior to four months of the sale deed - Exhibit 22.

10. The Reference Court did not rely on sale deed Exhibit 22 for the determination of the market value of the acquired lands on the ground that the lands under sale deed - Exhibit-22 were situated near the Highway whereas the acquired lands were at a distance of 5 to 6 fields away from the said lands. The Reference Court has relied upon previous award and, therefore, it would be relevant to notice its contents. Agricultural lands of village Bareja were acquired for the public purpose of Ahmedabad - Bombay National Highway wherein the Land Acquisition Officer had offered compensation of the acquired lands of village Bareja, which was the subject matter of Award Exh.23 at the rate of Rs.5 and Rs.8 per sq. meter. In Reference, the Court awarded additional compensation of Rs.30 per Sq.meter by Award Exh.23 in Land Reference Case No.140 of 1989. Thus, the market value of the acquired lands of village Bareja as on January 5, 1984 was determined at the rate of Rs. 35 and Rs.38 per sq.meter. It is not brought on record of these appeals that Award Exh.23 was challenged in higher forum. Therefore, the Award Exhibit 23 had become final. It is settled legal principle that earlier awards provide good guidance for the court in determining the market value of the acquired lands if the acquired lands of earlier awards were similar in situation and fertility and comparable in all respects with the acquired lands which were acquired subsequent to the acquired lands of earlier awards. Award Exhibit 23 was in respect of acquired lands of same village, which were placed under acquisition on January 05, 1984. In the present appeals,

the Notification under Section 4(1) of the Act was issued on July 02, 1991, and as there was a gap of 7 years between the two Notifications, the Reference Court had given rise in price of Rs. 21 on the market value which was determined by the Reference Court in the year 1984 by giving rise in price at 10% every year for the acquired lands of the same village because it is reasonable to infer that prices of lands increase with passage of time. The Reference Court has in the present Appeals awarded additional compensation at the rate of Rs. 51 per sq. meter over and above the market price of Rs.8/- and Rs.13/- per sq.meter offered by the Land Acquisition Officer for the acquired lands. The claimants had led sufficient evidence before the Reference Court that the acquired lands of Award Exh.23 of the same village Bareja were in all respects comparable in fertility and situation with the present acquired lands. In our opinion, by relying on the Award - Exh.23, the Reference Court has awarded just and reasonable compensation to the respondents for their acquired lands of village Bareja.

11. Even, if we place reliance on sale deed - Exhibit 22 for the determination of the market price of the acquired lands, then also, it cannot be said that the determination of market value at the rate of Rs.59 to 64 per sq. meter by the Reference Court is excessive or unreasonable. Sale deed - Exhibit 22 would indicate that in November 1991, land bearing Survey No. 2241/1/2 of Block No. 815, admeasuring 2125 sq. meter was purchased at the rate of Rs.102/- per sq.meter. If deduction of 35% is made because the land under sale deed is nearer to Highway or having smaller area as compared to the area of the acquired lands, we find that the market price determined by the Reference Court cannot be said to be excessive. Even reference to Award Exhibit 25, which was in respect of the acquired lands of village Aslali, which were placed under acquisition in February 22, 1984 for the purpose of Ahmedabad - Bombay National Highway, indicates that market value of the said acquired lands was determined at the rate of Rs. 75/- per sq.meter as on February 1984. Even if some deductions are made because of the distance between village Bareja and village Aslali, the market price determined by the Reference Court for the present acquired lands cannot be termed as excessive or unreasonable. Looking it from any angle, in our opinion, the determination of the market price of the acquired lands at the rate of Rs.59 to 64 per sq. meter i.e. Rs. 8 and 13 awarded by Land Acquisition Officer + Rs. 51 per sq. meter awarded by the Reference Court as additional compensation is just and reasonable. Therefore, the determination of the

market value of the acquired lands does not call for any interference in this group of appeals.

12. The submission of the learned counsel for the appellant that the Reference Court had erred in treating Kharaba land on par with agriculture lands and awarding uniform rate of compensation in respect of Kharaba land deserves to be rejected.

13. In awarding uniform rate of compensation to the agricultural land and kharaba lands, the Reference Court placed reliance on the decision of the learned Single Judge of this Court, reported in GUJARAT LAW TIMES, Vol. 23, page 84 (First Appeal No. 149 of 1978 Pinakin B. Amin vs. Spl. Land Acquisition Officer). In the aforesaid case, the learned Single Judge has observed that so far as the kharaba portion of the acquired land admeasuring 4 gunthas was concerned, the Reference Court without applying its mind, to the fact that Kharaba land was acquired for non-agricultural use, treated on par with the other acquired agricultural lands, and mechanically awarded compensation of Rs.1 per Are with respect to kharaba land. Learned Single Judge has observed that there was no reason to make any distinction between the kharaba portion and the remaining portion of the acquired agricultural lands. It was further held that so far as the agricultural operations are concerned, the kharaba land would not yield anything, but when the lands were acquired for non-agricultural purpose, the lands ought to have been valued on par with the agricultural lands. In our opinion, the facts involved in the present appeals are similar to the facts of Pinakin B. Amin's case (supra). Kharaba lands of present appeals were also acquired by the appellant for De-Solter plant which is non-agricultural purpose and hence kharaba lands shall have to be treated at par with the acquired agricultural lands. Further the certified copies of 7/12 extracts produced by the claimants at Exh. 35 to 102 also indicate that acquired kharaba lands were made cultivable in certain years wherein crops of paddy and wheat were raised. Therefore, in our opinion, kharaba lands in question which forms part of agricultural fields, were cultivable and in fact claimants in certain years had raised agricultural crops in the said part of kharaba lands. The Reference Court has therefore not committed any error in evaluating agricultural lands and kharaba lands at the uniform rate.

14. Further, as per the definition of "land" under Sec. 3(a) of the Act, the expression 'land' includes benefits to arise out of land and things attached to the

earth or permanently fastened to anything attached to the earth. Thus, the definition of 'land' under the Act is an inclusive definition. 'Land' as defined under the Act will also include kharaba land. Kharaba land in agricultural field is utilised by concerned agriculturist for purpose of carrying out agricultural operations and allied pursuits. "Allied pursuits" has been defined in Section 2 (2A) of the Bombay Tenancy and Agricultural Lands Act, 1948 as under :

"2. In this Act, unless there is anything repugnant in the subject or context:-

(2A) 'allied pursuits' means dairy farming, poultry farming, breeding of livestock, grazing (other than the pasturage of one's own agricultural cattle) and such other pursuits as may be prescribed";

As per Section 2(17) of the Gujarat Agricultural Lands Ceiling Act, 1960, land has been defined as under :

"2. In this Act, unless the context requires otherwise:

(17) 'land' means :

(i) in relation to any period prior to the specified date, land which is used or is capable of being used for agricultural purpose and includes the sites of farm buildings appurtenant to such land;

(ii) in relation to any other period, land which is used or is capable of being used for agricultural purposes, and includes:

(a) the sites of farm buildings appurtenant to such land;

(b) the lands on which grass grows naturally;

(c) the bid lands held by the Girasdars or Barkhalidars under the Saurashtra Land Reforms Act, 1951, the Saurashtra Barkhali Abolition Act, 1951 or the Saurashtra Estates Acquisition Act, 1952, as the case may be;

(d) such bid lands as are held by a person who, before the commencement of the Constitution (Twenty-Sixth Amendment) Act, 1971, as a Ruler of an Indian State comprised in the Saurashtra area of the State of Gujarat, as his private property in pursuance of the covenant entered into by the Ruler of such State."

Section - 3 of the Bombay Land Revenue Code, 1879 deals with interpretation of certain expressions. Section 3(4) of the Bombay Land Revenue Code interprets expression "land" as under :

"3. Interpretation section: In this Act, unless there be something repugnant in the subject or context;

(4) 'Land' includes benefits to arise out of land, and things attached to the earth, or permanently fastened to anything attached to the earth, and also shares in, or charges on, the revenue or rent of villages, or other defined portions of territory".

This interpretation of 'land' as defined under the Bombay Land Revenue Code is also inclusive. It appears that the definition of the expression "land" occurring in the Land Acquisition Act is borrowed with minor modification from the Bombay Land Revenue Code or Land Revenue Code. The definition of land as per Section 2(f) of the Gujarat Rural Debtors' Relief Act, 1976 as under :

"2. Definitions :- In this Act, unless the context otherwise requires :

(f) "land" means land which is used, or capable of being used for the purpose of agriculture and includes the sites of farms, buildings, appurtenant to such land."

Definition of land in the Gujarat Rural Debtors' Relief Act, 1976 is also an inclusive definition, and therefore, anything which is connected with agricultural operations is considered to be land within the meaning of

the Gujarat Rural Debtors' Relief Act, 1976. It would be appropriate to note that definition of the expression "agriculture" occurring in section 2(a) of the Gujarat Rural Debtors' Relief Act, is as under :

"2. Definitions - In this Act, unless the context other wise requires :-

(a) 'agriculture' includes horticulture, the raising of crops, grass or garden produce, the use by an agriculturist of the land by him or part thereof, for the grazing of his cattle, the use of any land, whether or not an appanage, to rice or paddy land, for the purpose of rabmanure, dairy farming, poultry farming, breeding of livestock, and the cutting of work."

The expression "agriculture" is also defined in Section 2(1) of the Gujarat Agricultural Lands Ceiling Act, 1960, which reads as under :

"2. In this Act, unless the context requires otherwise:

(1) 'agriculture' includes :

(a) horticulture,

(b) the raising of crops, grass or garden produce,

(c) the use by an agriculturist of the land held by him or part thereof for grazing,

(d) the user of any land, whether or not an appanage to rice or paddy land, for the purpose of rabmanure.

It is worthwhile to note the expression "assets" defined in Section 2(e) of the Wealth Tax Act, 1957 also indirectly refers to agricultural land and growing crops, grass or standing trees on such land. The expression of "assets" defined in Section 2(e) of the Wealth Tax Act, 1957, as under :

"2. In this Act, unless the context other wise requires:

(e) 'assets' includes property of every description, movable or immovable, but does not include:

(1) in relation to the assessment year commencing on the 1st day of April, 1969, or any earlier assessment year:

(i) agricultural land and growing crops, grass or standing trees on such land.

15. The Supreme Court in the case of SARIFABIBI vs. I.T. COMMISSIONER, GUJARAT, reported in AIR 1993 SC 2585 and in the case of WEALTH TAX COMMISSIONER, ANDHRA PRADESH vs. COURT OF WARDS, PAIGAH, reported in AIR 1977 SC 113, had an occasion to interpret expression

"agricultural land" occurring in Section 2(e)(i) of the said Act. The Apex Court in that context, has observed that in order that land may be termed as "agricultural land" within the meaning of Section 2(e)(i) of Wealth Tax Act it should be such land which can be either actually used or ordinarily used or meant to be used for agricultural purpose. (Emphasis supplied).

16. The conjoint reading of the expression "agricultural lands" and the "assets" would indicate that kharaba is a land, out of which the concerned agriculturist derives benefits inasmuch as such kharaba is used for efficient cultivation of the land to which the kharaba is attached. Mostly kharaba land is used as threshing floor where grain is separated from husk. Kharaba land is also used for the purpose of storing or keeping agricultural implements by the concerned agriculturist. By no stretch of imagination, it can be interpreted that kharaba land is not a part of agricultural field, wherein no agricultural operations can be performed.

17. The Supreme Court in the case of RAJA ANAND BRAHMA SHAH vs. STATE OF UTTAR PRADESH, reported in AIR 1967 SC 1061 had an occasion to interpret "waste land or arable land" within Section 17 (1)(4) of the Act. The Apex Court in para-5 of the judgment has observed as under:

"According to the Oxford Dictionary 'arable land' is "land which is capable of being ploughed or

fit for tillage". In the context of S.17(1) of the Act, the expression must be construed to mean "lands which are mainly used for ploughing and for raising crops" and, therefore, the land acquired in this case is not arable land. Similarly, the expression "waste land" also will not apply to 'forest land'. According to the Oxford Dictionary, the expression "waste" is defined as under :

According to the Supreme Court, the expression "waste land" as contrasted to "arable land" would therefore mean "land which is unfit for cultivation or inhabitation, desolate and barren land with little or no vegetation thereon."

18. We notice that the Land Acquisition Officer has treated the kharaba land as waste land and awarded compensation treating it as waste land . The kharaba land is a part of the agricultural field to carry out the ancillary things connected with the agricultural operations. It would be trite to say that the kharaba land cannot be cultivated and it is totally unfit for cultivation. We may mention here that the kharaba land is a part of agricultural field, which can be used for any agricultural operations. Therefore, we hold that the Reference Court has not erred in treating the kharaba land at par with the agricultural land and awarding the uniform compensation to the area covered by kharaba land of the acquired agricultural lands. We endorse the view of the learned Single Judge reported in Gujarat Law Times, Vol. 23 page 84 (First Appeal No. 149 of 1978 decided on July 24, 1985). We are of the opinion that the kharaba land which is part of agricultural lands and which is fit for cultivation cannot be distinguished from agricultural lands and, therefore, the amount of compensation cannot be reduced on the ground that it is not an agricultural land. The utility of the land to the agriculturists and those who are going to acquire the same are to be taken into consideration while determining the amount of compensation in all types of land.

19. The submission of the learned counsel for the appellant that the Reference Court had erred in awarding interest from the date of taking over possession of the acquired lands, deserves to be accepted. The Reference Court in para-22 has observed that the claimants are entitled to get interest at the rate of 9% per annum for the period of one year from the date of taking over possession of the acquired lands and thereafter at the rate of 15% per annum till the amount is fully paid or

deposited. Learned counsel for the appellant has submitted that prior to the issuance of the Notification under Section 4(1) of the Act, the lands were under temporary acquisition and the respondents claimants were paid rent for the period of temporary acquisition of the acquired lands and, therefore, the claimants should not have been awarded interest from the date of taking over possession of the acquired lands. Learned counsel for the appellant has placed reliance on the decision of the Division Bench of this Court in the case of DY. GENERAL MANAGER, ONGC vs. CHATURJI LALJI, reported in 1998 (1)130. The Division Bench in paragraph - 11 while dealing with the question of award of the interest under Section 28 of the Act, held that since the lands were accruing compensation for temporary acquisition by the same authority, the date of possession will pale into insignificance. In view of the aforesaid observation of the Division Bench of this Court in Dy.General Manager (ONGC) (supra), the award of the Reference Court to the extent that it awards interest from the date of possession deserves to be modified. It is held that the respondents claimants shall not be entitled to interest from the date of taking over possession of the acquired lands, but, from the date of the Award as they were paid compensation for the temporary acquisition of the acquired lands prior to the issuance of the Notification under Section 4(1) of the Act. We, therefore, modify the Award of the Reference Court to the extent that the respondents claimants would be entitled to interest under Section 28 of the Act from the date of the Award of the Land Acquisition Officer till realisation and the same accordingly stands modified.

20. These were the only submissions advanced by the learned counsel for the appellant.

21. For the foregoing reasons, this group of Appeals is partly allowed. The determination of the compensation of the market value of the acquired lands at Rs.59 and 64 minus awarded by the Land Acquisition Officer at Rs. 8 and 13 is confirmed. The Award of the Reference Court is modified to the extent that the respondents claimants shall be entitled to interest under Section 28 of the Act not from the date of taking over possession of the acquired lands, but, from the date of the Award till realisation. There shall be no order as to costs. The office is directed to draw decree in terms of this judgment.

22. Appellant is directed to deposit the amount of compensation as per this judgment within four months from

today.
